

PS 5875.11 TRANSFER OF INMATES TO STATE AGENTS FOR PRODUCTION OF STATE
WRITS



Program Statement

OPI: CPD
NUMBER: 5875.11
DATE: 9/11/2002
SUBJECT: Transfer of Inmates to
State Agents for
Production on State
Writs

1. **PURPOSE AND SCOPE.** [§527.30. The Bureau of Prisons will consider a request made on behalf of a state or local court that an inmate be transferred to the physical custody of state or local agents pursuant to state writ of habeas corpus ad prosequendum or ad testificandum. The Warden at the institution in which the inmate is confined is authorized to approve this transfer in accordance with the provisions of this rule.]

a. State or local law enforcement agents may obtain custody of an inmate pursuant to state writs of habeas corpus ad prosequendum or ad testificandum, provided there is no detainer on file from any jurisdiction in the receiving state. This reverses the long standing interpretation that, when production is for the purpose of prosecution, the provisions of the Interstate Agreement on Detainers (IAD) will ordinarily control the inmate's production.

b. The IAD was not meant to be the exclusive means of obtaining an inmate's custody for prosecution. Legislative history suggests the IAD was enacted to provide prisoners with a method of removing detainers lodged against them, not as a means of promoting prosecution.

2. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. State or local law enforcement agents may be allowed to obtain custody of federal inmates for both criminal and civil cases.

b. State or local authorities will agree to provide the same level of security for each inmate in accordance with Bureau policy.

[Bracketed Bold - Rules]

Regular Type - Implementing Information

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5875.10 Transfer of Inmates to State Agents for
Production on State Writs (3/17/97)

b. Directives Referenced

PS 5180.04 Central Inmate Monitoring System (8/16/96)
PS 5800.13 Inmate Systems Management Manual (6/28/02)
PS 5800.12 Receiving and Discharge Manual (12/31/97)

c. Rules cited in this Program Statement are contained in
28 CFR 527.30-31.

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for
Adult Correctional Institutions: None

b. American Correctional Association 3rd Edition Standards
for Adult Local Detention Facilities: None

c. American Correctional Association 2nd Edition Standards for
Administration of Correctional Agencies: 2-CO-4B-02

5. MCC/MDC/FDC/FTC PROCEDURES. Procedures in this Program
Statement apply to Metropolitan Correctional Centers,
Metropolitan Detention Centers, Federal Detention Centers, and
Federal Transportation Centers.

6. PROCEDURES. [§527.31

**a. These procedures apply to state and federal inmates serving
sentences in federal institutions, and shall be followed prior to
an inmate's transfer to state or local agents other than through
the Interstate Agreement on Detainers.]**

- (1) A state or local law enforcement agency may, with the
Warden's approval, obtain an inmate by means of a writ
of habeas corpus ad prosequendum without filing a
detainer. Writs from Tribal Courts are treated in the
same manner as writs from a state or local court.
Writs from the District of Columbia Superior Court
(civil and criminal) will be treated in the same manner

as federal writs (pursuant to the All Writs Act, Title 28 U.S.C. § 1651). The state is bound by the IAD's provisions only when a detainer has been filed.

- (2) If there is no detainer on file from the jurisdiction where the prisoner is being requested under a writ, but there are one or more detainers on file from other jurisdictions in the same state, then the IAD's provisions apply, i.e., notification.
- (3) Pending arrival at a designated institution, the inmate may be removed by state writ, but not under the IAD. Questionable cases may be referred to the Regional Counsel.

[b. The Warden shall authorize transfer only when satisfied that the inmate's appearance is necessary, that state and local arrangements are satisfactory, that the safety or other interests of the inmate (such as an imminent parole hearing) are not seriously jeopardized, and that federal interests, which include those of the public, will not be interfered with, or harmed. Authorization may not be given where substantial concern exists over any of these considerations.]

- (1) The Warden must review personally and make a decision on any production request (either civil or criminal). Particular care should be taken in the review and decision process involving inmates with either IN or MAXIMUM custody.
 - This authority may not be delegated below the level of Acting Warden.
- (2) The Warden is to notify the state authorities of any security concerns related to a particular inmate, regardless of the inmate's custody level. The Warden must receive the state authorities' written agreement that they will provide the inmate with the same level of security (number of escorts, restraints, etc.) Bureau policy requires.

Failure of state authorities to agree to these requirements is grounds for denying the request.

- (3) When the inmate is a serious custody risk, or when the state refuses to abide by, or cannot abide by this PS'

requirements, the transfer to state agents should be refused in favor of production by the U.S. Marshals Service (USMS).

- These cases must first be referred to the Regional Counsel for approval and coordination with the USMS.

[c. The request for transfer of custody to state agents shall be made by the prosecutor or other authority who acts on behalf of the court and shall be directed to the Warden of the institution in which the inmate is confined. The request shall be made by letter. The request shall indicate the need for appearance of the inmate, name of the court, nature of the action, date of the requested appearance, name and phone number of the state agency or other organization with responsibility for transporting the inmate, the name and location where the inmate will be confined during legal proceedings, and anticipated date of return. For civil cases, the request shall also indicate the reason that production on writ is necessary and some other alternative is not available. The applying authority shall provide either at the time of application or with the agent assuming custody, a statement signed by an authorized official that state or local officials with custody will provide for the safekeeping, custody, and care of the inmate, will assume full responsibility for that custody, and will return the inmate to Bureau of Prisons' custody promptly on conclusion of the inmate's appearance in the state or local proceedings for which the writ is issued.]

- (1) Attachment A contains a sample letter to instruct a state authority on the information necessary for transfer. The letter from the state authority, requesting transfer, may be sent by common carrier or facsimile. Upon receipt, appropriate verification must be made.
- (2) If the request for transfer of custody to state agents concerns a Witness Security inmate, that request must be forwarded to the Inmate Monitoring Section, Central Office.

[d. A certified copy of the writ (one with the Seal of the Court) must be received at the institution prior to release of the inmate. Institution staff shall verify the authenticity of the writ.]

- (1) Verification is usually done by telephoning the Clerk of the Court which issued the writ. Verification must be noted on the writ to include:

- name of verifying court official,
- his or her title,
- phone number,
- Bureau staff person's name and title, and
- date.

- (2) The Court's seal may be electronic or manual.

[e. Institution staff shall maintain contact with the state or local law enforcement agency with responsibility for transfer of the inmate to determine the exact date and time for transfer of custody. If the inmate is awaiting federal trial or has federal civil proceedings pending, staff must clear the transfer through the U.S. Attorney.

f. Institution staff shall determine from the state or local agency the names of the agents assuming custody. Staff must carefully examine the credentials of the agents assuming custody. In any doubtful case, verification should be sought.]

Usually, verification is obtained by phoning the appropriate state agency. When a private carrier, contractor, or the USMS is transporting the inmate for the state, institution staff may request, in advance, names of individuals who will be assuming the inmate's custody.

[g. Transfers in civil cases pursuant to a writ of habeas corpus ad testificandum must be cleared through both the Regional Counsel and the Warden. Transfer ordinarily shall be recommended only if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit. Postponement of the production until after the inmate's release from federal custody will always be considered, particularly if release is within twelve months.]

- (1) The Warden must obtain the Regional Counsel's clearance prior to releasing an inmate on a state civil writ. It is recommended that the Regional Counsel be used for all contacts and discussions with attorneys, court officials, or with respect to any legal considerations affecting the production decision.

There is no presumption that an inmate must be released in state civil cases.

- (2) The Regional Counsel, prior to notifying the Warden that the release is recommended, must consult with the U.S. Attorney from the district in which the inmate was prosecuted.

- The main purpose of this contact is to make certain that there are no facts about the inmate, bearing on the decision to authorize transfer, which are not known to Bureau staff.

[h. Release of inmates classified as Central Inmate Monitoring Cases requires review with and/or coordination by appropriate authorities in accordance with the provisions of 28 CFR part 524, subpart F.]

28 CFR Part 524, Subpart F refers to the Program Statement on the Central Inmate Monitoring System.

The Inmate Systems Management department must follow the procedures in the Inmate Systems Management Manual for releasing inmates on writ. The receiving state agent's name must be obtained on the Release Authorization (BP-S392). Information which must be given to the state agent to accompany the inmate is contained in the Receiving and Discharge Manual.

7. CONTRACT FACILITIES. The above procedures will also pertain to federal inmates housed at contract facilities operated by private corporations.

8. ASSISTANCE. Questions regarding these procedures may be referred to the ISM Branch, Central Office at FTS 367-3050 or (202) 307-3050.

/s/

Kathleen Hawk Sawyer
Director

(State Authority)
Address

RE: Inmate's Name:
Reg. No.:

Dear _____:

The request for transfer of an inmate to state agents for production on state writs should contain at a minimum the following information:

1. Need for appearance of inmate;
2. Name and address of court issuing writ, name of the judge, and name, address, and phone number of clerk of the court;
3. Nature of action;
4. Party seeking production or making request for production to state court;
5. Reason production on writ is necessary and some other alternative is not available (for civil cases);
6. Name, location, and phone number where the inmate will be confined during legal proceedings;
7. The date for requested proceedings;
8. Name and phone number of state agency, specific name of agent(s) who will transport the inmate at direction of the court and whether a private carrier, contractor (if permitted by Bureau of Prisons policy), state agency or the USMS will be transporting the inmate for the state;
9. The projected date of return to the federal institution; and
10. A statement from the state authority assuming custody, signed and dated to include the following:

This is to certify that the above-named inmate will be provided safekeeping, custody, and care while in the custody of the (State Authority), and that said (State Authority) will assume responsibility for that custody, to include providing the inmate the same level of security required by Bureau of Prisons policy, and will return the inmate on conclusion of the inmate's appearance in the proceeding for which the writ was issued. I have the full power and authority to make this certification for said (State Authority) as the (Title or Position) for that authority.

PRINTED NAME/SIGNATURE

DATE

WITNESS' PRINTED NAME/SIGNATURE

DATE

Sincerely,

(Warden's Name)
Warden